of course, there is always the possibility of retaliation (again difficult to measure) by the administration that is the object of any coercive effort.

### C. It Is Particularly Difficult For The Commission To Measure The Risks Entailed By A Reciprocity Requirement Under The Circumstances Present Here.

The measurement difficulties described above are, to a large extent, inherent in any "game" situation where assured benefits are risked to coerce a larger favorable outcome. However, they apply with particular force to the factual circumstances presented to the Commission at this juncture.

1. Entry into the U.S. market is not essential for foreign carriers to participate in the provision of global seamless services and the decision of a foreign administration to open its markets is likely to rely far more heavily on local concerns than on the ability to enter the U.S. market.

In applying its proposed EMA test, the Commission must be careful not to over-estimate its ability to influence foreign behavior. Although it may well be the case that, as the Commission states, the United States is "the most vital market for shaping world competition," *Notice* at ¶20, foreign carriers need not enter the U.S. facilities-based international market or invest in a U.S. facilities-based carrier in order to actively participate in the emerging global telecommunications market for seamless services.[12] With the exception of Telefonica, the monopoly or dominant foreign carriers that have joined AT&T's WorldPartners and Unisource alliances[13] have not thought it necessary to enter the facilities-based U.S. international market or invest directly in a U.S. carrier. Rather, they have simply formed alliances that facilitate such participation.[14] Consequently, they have no need to remove their home market restrictions in order to participate in the emerging global market.

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[12] This is not to say that there are no strategic advantages to be obtained by direct investment in a U.S. carrier, but only that such investment (as shown in the text below) is not essential. Such direct investment is likely to have less strategic significance in the case of AT&T because of AT&T's size and market power. In any case, whether the investment is made directly in the U.S. carrier or in a joint venture with the U.S. carrier, the danger of discrimination or anticompetitive conduct is the same. *See* Section IV, below.

[13] In July 1994, well after it had entered the U.S. facilities-based U.S. international market, Telefonica announced that it was allying itself with AT&T through Unisource. "Telefonica de Espana Joins Unisource, Aiding AT&T," *The Wall Street Journal*, July 5, 1994, Section B page 2 (1994 WL-WSJ 334014).

[14] "AT&T, KDD, Singapore Telecom Form WorldSource Venture Offering Intelligent Network Service to Multinational Businesses," *Telecommunications Reports*, May 31, 1993 at 23-26 (KDD and Singapore Telecom invest $100 million as "start-up" funds); "AT&T Expands Its Global Reach," *Data Communications*, February 1, 1995, 1995 WL 7921249 (AT&T to merge its European network services with those of Unisource).

In any event, the decision by a foreign administration to open its telecommunications markets to competition and the pace of such liberalization will be governed by internal economic, political and legal considerations. In making its decision, the foreign administration will presumably give primary weight to the differing interests of the telecommunications entity, its employees, would-be investors in the liberalized telecommunications market, and consumers of telecommunications services. It is doubtful that the U.S. can have much leverage over decisions which, in reality, are inextricably intertwined with the unique political culture and the economic structure of a particular country.

2. The application of pressure by the Commission to induce foreign administrations to liberalize their markets may be counterproductive.

In some cases, it is apparent that the attempt to apply pressure on the foreign administration is likely to backfire, and, instead of achieving accommodation, to cause resentment. Such resentment might follow if the Commission's reciprocity rule were viewed as one-sided or hypocritical. The U.S. market is not nearly as wide open to foreign investment, and certain foreign markets are not nearly as closed to U.S. carriers, as the *Notice* suggests. In the U.S., for instance, §310 of the Act remains a barrier to full participation of foreign entities in the fast-growing wireless markets. The U.S. is virtually alone among major industrial nations in specifically discriminating against foreign participation in such markets. The local exchange markets in the U.S. also remain *de jure* or *de facto* monopolies, and at this point it is unclear when other carriers will be afforded a realistic opportunity to effectively compete in such markets.[15] Under these circumstances, a Commission rule requiring that the primary market of the foreign carrier be fully open to U.S. carriers before the foreign carrier is allowed to make even a non-controlling investment in a U.S. carrier may well be viewed as one-sided or hypocritical, and, as a consequence, retard rather than accelerate the opening of foreign markets to U.S. carriers.[16]

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[15] Many U.S. carriers are actively participating in the development of competitive markets in various foreign countries. For example, AirTouch Communications has observed that American carriers "have better access to the German wireless market than that which is available to German carriers today in the U.S." Comments in File No. ISP-95-002 at 6. MFS also was recently awarded a contract by the city of Frankfurt, Germany to construct a fiber-optic network in order to provide telecommunications services to businesses located in that city. *See* "MFS deal shakes Deutsche Telekom monopoly," *Financial Times*, Friday March 10, 1995 at 1.

[16] A U.S. rule requiring reciprocity may also backfire once foreign countries complete the necessary steps required to open

Footnote continued on next page

Moreover, many countries are committed to open communications markets and these countries are already taking the necessary steps toward privatizing and liberalizing their markets. Foreign administrations may well assume that, given the uneven openness of the U.S. market, the Commission is peculiarly ill-positioned to intervene and seek to participate in the resolution of timing issues which are largely governed by considerations internal to other countries.

If the Commission does seek to intervene on such timing issues, however, it must recognize that the privatization and liberalization of markets cannot occur overnight. As the U.S. experience with the breakup of the Bell System suggests, the transition to a competitive long distance market structure took several years, and problems remain even after that initial period. Thus, a Commission demand for the immediate opening of foreign markets as a basis for reciprocity is likely to be viewed as completely unreasonable. Even AT&T has proposed allowing a foreign carrier to participate in the U.S. market as long as U.S. carriers are

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their markets to competition. At that point, these countries may set reciprocity standards that the U.S. will be unable to meet because of the continued restrictions in §310 and the failure of the U.S. or individual states to open local markets to competition.

provided comparable opportunities to compete in such foreign carrier's home market within 2 years. *See* AT&T's Petition for Rulemaking (RM-8355) at 7. For this reason, Sprint believes that, in order to satisfy a reciprocity test, it would be sufficient for a foreign administration to show that it is making progress in liberalizing its markets and that such markets will be open within a reasonable period of time.

3. The Commission's approach may lead to inconsistent U.S. trade policies.

The Commission will need to exercise care that its reciprocity test does not interfere with overall U.S. trade policies. Although the Commission may take U.S. trade policies into account in determining where the public interest lies in much the same way as it may consider other federal policies outside of its expertise, *LaRose v. F.C.C.*, 494 F.2d 1145, 1146 n. 2 (D.C. Cir. 1974), trade policy is outside its primary jurisdiction and the Commission has no authority to formulate such policy on its own. As the Executive Branch explained the last time the Commission proposed that it base regulatory actions on the telecommunications policies of foreign administrations:

> The FCC is an independent regulatory agency and its statutory jurisdiction does not include the independent formulation or implementation of U.S. trade policy. U.S. trade policy does bear on what actions are in the public interest. The FCC has no greater

> authority to develop or implement U.S. trade policy, however, than it has with respect to antitrust policy, foreign policy, and national defense policy....
>
> * * * * *
>
> Under section 301 of the Trade Act of 1974, as amended (19 U.S.C. §2411 (1984)), the President can implement retaliatory measures on services after the U.S. Trade Representative consults with independent regulatory agencies, including the FCC, as appropriate. Existing law, however, provides no retaliatory action and, indeed, the whole notion of any unilateral action by the FCC is inimical to the plain need for consistency in developing and implementing U.S. trade policy....
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> * * * * *
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> In sum, while the FCC should continue to take U.S. trade policy into account, we do not believe that it has authority to commence proceedings solely for trade reasons, or to base communications regulatory actions solely on trade grounds.

Comments of the National Telecommunications and Information Administration filed April 17, 1987 in *Regulatory Policies and International Telecommunications* (CC Docket No. 86-494) at 3, 5-6.[17]

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[17] NTIA's comments were filed in coordination with and on behalf of the Office of the U.S. Trade Representative, the Office of Management and Budget, Council of Economic Advisers, and the Departments of State, Treasury, Defense and Labor.

The Commission states that in applying its EMA test, it "would solicit the views of the Executive Branch on the proposed foreign carrier's entry into the U.S. market," *Notice* at ¶45, and clearly, in light of the Executive Branch's responsibility for trade policy, the views and input of the Executive Branch agencies would be necessary. Nevertheless, conflicts are possible given the divergent responsibilities of the Commission and those executive agencies involved in developing and implementing U.S. trade policy. Because the Commission's subject matter jurisdiction is limited to communications, any trade negotiations required by its EMA test would be restricted to the communications sector. However, the executive agencies responsible for trade policy may determine that, in order to benefit the overall U.S. economy, "asymmetric" access by foreign entities to the U.S. international communications market should be exchanged for an opportunity for U.S. firms to participate in non-communications markets in such entities' home countries, *e.g.*, computers, intellectual property or automobiles.[18] The Commission is simply not in the position to make these types of trade-offs.

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[18] For a discussion of tariff and non-tariff reciprocity issues, *see* John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, MIT Press, 1989, at 123-127.

### D. An EMA Test Is Likely To Be Least Effective In Situations That Involve, Not Foreign Control, But Only Minority Foreign Investment.

It is readily apparent that the application of an EMA test is fraught with difficulty. There is no way that the Commission can demonstrate that this test will result in a net gain of benefits to U.S. consumers or the U.S. economy and that it is otherwise consistent with the public interest. However, it is at least clear that the application of an EMA test is likely to be least efficacious in situations that involve, not foreign carrier control, but merely foreign carrier minority investment in a facilities-based U.S. international carrier. Other things being equal, the ability to control its U.S. operations through the management of its own carrier should be worth more to the foreign carrier than the right to make a minority, and non-controlling, investment. Where the benefits to the foreign carrier of its investment are less, the foreign administration is less likely to be coerced into opening its markets. Consequently, the Commission's EMA strategy is particularly ill-suited to situations where only such minority investment is involved. Because of the substantive difficulties discussed herein, and because of the procedural difficulties discussed in Section II above, Sprint would strongly recommend that even if the Commission decides to apply EMA or a reciprocity test in situations where control is involved, it should, nevertheless, decline to apply EMA where only minority investment is involved.

## IV. THE COMMISSION SHOULD UTILIZE GENERALLY APPLICABLE RULES, RATHER THAN §214 PROCEDURES, TO ADDRESS POTENTIAL DISCRIMINATION IN CASES NOT INVOLVING FOREIGN ENTRY OR FOREIGN CONTROL.

As discussed above, the Commission proposes to apply its EMA test to address not only reciprocal entry of U.S. carriers in foreign markets, but also discriminatory or anticompetitive conduct favoring one U.S. carrier to the detriment of others.

The Commission has often expressed concern over the potential for discriminatory or anticompetitive conduct by a foreign carrier favoring one U.S. carrier at the expense of others,[19] although the Commission lacks plenary jurisdiction over such matters.[20] Sprint agrees that the potential for such discrimination exists and has consistently supported rules that pre-

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[19] *See, e.g., Regulation of International Common Carrier Services*, 7 FCC Rcd 7331 (1992). However, Sprint notes that the Commission has consciously permitted such favoritism to take place -- *e.g.*, by refusing to require that all U.S. carriers receive the benefit of an accounting rate reduction simultaneously. *See Regulation of International Accounting Rates*, 7 FCC Rcd 8049 (1992).

[20] The Commission has no extraterritorial jurisdiction over the conduct of foreign carriers, just as foreign governments have no extraterritorial jurisdiction over U.S. carriers.

vent such discrimination. Where a foreign monopoly carrier is not prohibited from doing so by its home-country laws, it may have incentives to favor a particular U.S. carrier through lower accounting rates, an excessive allocation of return traffic, favorable treatment on circuit provisioning, etc.[21]

The incentive to engage in this type of behavior is directly proportional to the benefit the foreign carrier would receive from the discrimination. Obviously, foreign entry through 100% ownership of a carrier operating in the U.S. market would create the strongest incentive to engage in such conduct: the foreign carrier could keep all of the benefits of such discrimination for itself. Foreign control of a U.S. carrier also creates a strong incentive: the high level of ownership that accompanies control will give a correspondingly large share of the benefit of the discrimination to the foreign carrier.

Where the foreign carrier has only a minority financial interest in the U.S. carrier, however, the benefit it could receive from such discriminatory conduct becomes quite attenuated. For example, if discriminatory conduct by a foreign carrier increases

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[21] Such favoritism is easily detectable by the disfavored carriers who can then seek redress from the appropriate foreign regulatory authorities.

the profits of a U.S. carrier in which it has a 10% ownership interest by one dollar, the foreign carrier will gain only 10 cents. This payoff will hardly be an inviting business proposition when the corresponding discrimination against other U.S. carriers results in a direct loss in profits in the home country that will be borne entirely by the foreign carrier. *Cf., U.S. v. Western Electric* 1989 WL 13378, 13378 *4 (D.D.C. 1989). Thus, one limit that the Commission could reasonably apply would be to confine its concern over discriminatory, anticompetitive favoritism by a foreign carrier only to those instances where direct foreign entry (through control of a U.S. carrier or *de novo* entry) is involved, and the home country laws of the foreign carrier do not prohibit such conduct.

If the Commission nonetheless believes that its reach over such conduct should be broader, it must recognize that the incentive to discriminate is not exclusively a function of a foreign equity interest in a U.S. carrier. There are other business arrangements between U.S. and foreign carriers that may give the foreign carrier every bit as much of an incentive to discriminate in favor of a particular U.S. carrier as a non-controlling equity investment in a U.S. carrier.

For example, as a dominant U.S. international carrier controlling 65% of the U.S. originating international telephone market,[22] AT&T has far more bargaining power with foreign correspondents than any other American carrier. It can use this power to retaliate against unfriendly foreign correspondents in a number of ways, many of which are subtle but nonetheless could send a "message" to the foreign carrier.[23] AT&T's significant ownership interest in transoceanic cables also gives it a significant bargaining position with other foreign carriers: the timing of construction of new facilities and the location of the overseas cable landing points can be very important to a foreign carrier, and provide a reason to keep AT&T "happy." Similarly, AT&T is a major supplier of communications equipment to the rest of the world,[24] and a foreign carrier may give AT&T favored treatment on

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[22] Common Carrier Bureau, "Preliminary 1993 Section 43.61 International Telecommunications Data," September 1994, Figure 7. For all telecommunications services, AT&T's share is 64%. *Id.*

[23] *E.g.*, not including a country in a promotional rate offering that is applicable to competing countries and withholding transiting traffic.

[24] In 1992, AT&T sold $1.9 billion of network equipment overseas; its switches are used in 40 foreign countries.
M. Arellano *et al.*, "AT&T: A Strategic Analysis," *Northern Business Information*, December 1993, at 52.

communications traffic as a *quid pro quo* for a favorable price for equipment. Finally, AT&T's long history of serving the international market gives it working relationships with foreign carriers that newer U.S. entrants simply cannot emulate. There is concrete evidence that AT&T does receive favored treatment -- for whatever reason -- from many overseas carriers. *See*, Sprint's December 5, 1994 Reply in File No. ISP-95-002, App. A (showing over-allocations of return traffic to AT&T by several foreign carriers).

Business relationships other than those discussed above can also give rise to incentives to discriminate. A U.S. carrier investment in a foreign carrier is one obvious example. For reasons not explained, the Commission would not apply the EMA in such a case (*see* ¶50). A foreign carrier having a U.S. carrier as a major, but non-controlling, investor may have representatives of that U.S. carrier on its governing board and would have an incentive to keep that investor happy. If the Commission believes that less than controlling interests of foreign carriers in U.S. carriers give rise to a realistic possibility of discrimination, it is difficult to see why the same would not be true where the U.S. carrier has such an investment in a foreign monopoly carrier.

Another class of arrangements that the Commission proposes not to reach -- yet which also can give rise to close working relationships that may create a natural incentive towards favoritism -- are those in which U.S. and foreign carriers mutually invest (whether with currency, intellectual property, equipment or marketing efforts) in a joint venture to offer other services. *See, e.g., U.S. v. Western Electric,* 12 F.3d 225, 231 (D.C. Cir. 1993). AT&T's WorldPartners consortium and its Unisource alliance are obvious examples of this sort of arrangement. AT&T and its partners are pouring hundreds of millions of dollars into their effort to become a major player in the market for seamless global services.[25] Having aligned themselves in this manner (whether or not their arrangements are contractually exclusive), they now have a stake in their mutual success, not only in the joint venture but also in other markets as well.[26] Although the

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[25] "AT&T and Unisource Establish $200 Million European Joint Venture," *Common Carrier Week*, December 19, 1994; *see* also, *supra,* n. 14.

[26] Because of AT&T's sheer size, it is unlikely that any of its WorldPartners allies feels the need to prop up AT&T against Sprint or MCI, but they may have an interest in favoring AT&T so that Sprint and MCI have fewer resources to devote to competing with their joint venture with AT&T. There is some evidence they are already doing so. For example, recently the Philippines Long Distance Telephone Co. ("PLDT"), which is a member of AT&T's WorldPartners alliance, and Syrikat Telekom Malaysia ("STM"),

Footnote continued on next page

Commission concedes in ¶62 that such relationships could induce favoritism, it tentatively concludes -- with no explanation of what facts or analysis led it to reach such a conclusion -- that the incentives for discriminatory behavior resulting from these relationships are small in comparison with those resulting from ownership interests (even small, non-controlling interests).

If the Commission believes there is a threat of discriminatory or anticompetitive conduct where direct foreign entry or foreign control of a U.S. carrier is not involved, then it makes little sense for the Commission to look only at foreign equity investments in U.S. carriers and to ignore the possibility of such conduct where there is a U.S. investment in the foreign carrier, or where there are other substantial business relationships between the U.S. and foreign carriers. Commission action to curb anticompetitive conduct arising from only one of many types of relationships that could give rise to such conduct could unfairly handicap some U.S. carriers while leaving others unrestrained.

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which is a member of yet another AT&T-led alliance called Pacific Partners, granted AT&T -- and AT&T alone -- temporary accounting rate reductions. *See* January 11, 1995 Letter to Mr. George Li, Chief International Facilities Division from Mr. Kent Nakamura, General Attorney for Sprint Corporation, and February 14, 1995 Letter to Mr. William F. Caton, Acting Secretary, Federal Communications Commission from Mr. Kent Nakamura.

Thus, rather than using an EMA test and engaging in a questionable use of §214, as the Commission has proposed, the Commission should instead use its general rulemaking powers to prescribe standards of conduct applicable to all U.S. carriers regardless of the amount of or type of affiliation with a foreign carrier.[27] Any use of a percentage of non-controlling equity investment as a cut-off point for imposing non-discrimination standards is inherently arbitrary; omits consideration of other business relationships that are just as likely to create incentives for discrimination; and, as discussed in Section II, would involve a highly questionable use of §214 of the Act.

Sprint believes the substance of the conditions imposed in *BT/MCI* are a reasonable model to employ for rules of general applicability,[28] and that other, more onerous conditions proposed in the *Notice*, such as requiring the filing of the foreign carriers' accounting rates with third countries, are unwarranted and likely to be regarded as too intrusive into areas beyond the Commission's jurisdiction.

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[27] In ¶91 of the *Notice*, the Commission proposes to do just that with respect to its proportionate return policy.

[28] However, since these rules would be codified, there would be no need for the sort of "voluntary" applications to amend existing §214 authorizations, as was done in *BT/MCI*.

If the Commission decides to proceed down this path, however, it should do so only until foreign markets are open to competition. Once there is effective competition in those markets, it would not be unreasonable for a U.S. carrier without market power to engage in exclusive traffic handling relationships with a foreign carrier that also lacks market power in that country. It is impossible for the Commission to define, by regulation, when market power does or does not exist in a particular foreign country, but it should allow waivers from these non-discrimination requirements upon a showing that such is the case.

## V. THE COMMISSION'S APPROACH UNDER §310(b)(4) SHOULD BE CONSISTENT WITH ITS §214 PROCEDURES.

The Commission, in ¶92, has asked for comment on whether its proposed EMA test should be incorporated into its public interest determinations under §310(b)(4) in cases where the foreign ownership of a radio licensee would exceed the 25 percent statutory benchmark. In this regard, the Commission noted (*id.*) that it has traditionally been more lenient towards foreign ownership of common carrier radio licensees than is true for broadcast licensees.

As discussed above, rather than employ the EMA as formulated in the *Notice*, Sprint believes that reciprocal opportunity for U.S. carrier entry into foreign markets should be considered, if at all, only where there is direct foreign entry or foreign acquisition of control of a U.S. carrier, and that concerns over discrimination by a monopoly foreign carrier among U.S. carriers can best be addressed through rules of industry-wide applicability, regardless of the presence or extent of the foreign investment. If the Commission adopts Sprint's recommendations, there is no public interest need to employ different standards in making determinations under §310(b)(4) where foreign ownership would exceed the 25 percent statutory benchmark. Thus, in cases where a foreign carrier is acquiring less than a controlling interest in the U.S. carrier, but the total foreign ownership interest would exceed the 25 percent statutory benchmark, the Commission should routinely grant petitions for declaratory ruling, brought under §310(b)(4), that such foreign ownership is not inconsistent with the public interest. As explained in Section III, it would be a marked departure from precedent for the Commission to insist on reciprocal market entry where there is less than a controlling interest of a U.S. carrier, and for the reasons explained in Section IV, the Commission's discrimination concerns would be fully addressed by application of the *BT/MCI* conditions in the form of generally applicable rules.

If, however, the Commission does not adopt Sprint's recommendations, it should nonetheless grant petitions for declaratory rulings under §310(b)(4) in any case where a foreign carrier (or carriers) acquires 20 percent or less of the U.S. carrier and the U.S. carrier and its foreign partners are willing to adhere to the conditions required in *BT/MCI*. Having allowed the BT/MCI transaction to go forward subject only to those conditions, it would be unfair to other U.S. carriers to now impose a different and more stringent standard for foreign investment,[29] and BT's and MCI's Concert alliance would gain an unfair competitive advantage in the offering of global worldwide services.

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[29] While the Commission, in ¶14 of the *Notice*, states that in formulating those conditions, it took into account the U.K.'s "relatively liberal regulatory regime and the existence of competition in the U.K. domestic telecommunications market," the fact is that the *BT/MCI* decision was not predicated on an assumption that the U.K. regulatory authorities would effectively control the exercise of BT's dominant position in the U.K. market today. *See* Sprint's December 5, 1994 Reply in File No. ISP-95-002, at 66-67. Furthermore, the U.K. has not yet permitted entry into international facilities-based competition, which is the market deemed to be relevant in this proceeding. *See, e.g., Notice* at ¶¶28 and 31. Thus, the liberalizing actions taken by the U.K. to date are analytically irrelevant to the conditions imposed in *BT/MCI*, and accordingly, there is no reason why the *BT/MCI* precedent should not be applied to other §310(b)(4) requests.

## VI. OTHER ISSUES

The Commission has raised other issues regarding its current international regulatory policies. Sprint addresses several of these issues below.

### A. There Is No Need To Change The Existing Dominant/ Nondominant Classification Scheme For International Carriers.

Under current Commission rules, a determination of whether a U.S. carrier and foreign carrier are affiliates rests upon control. A U.S. carrier is defined "as an affiliate of a foreign carrier when the U.S. carrier controls, is controlled by, or is under common control with a foreign carrier." *Notice* at ¶65. Whether such U.S. carrier is classified as dominant or nondominant on a particular route will then depend on the market power of its foreign affiliate. *Id.* The *Notice* now seeks comment on whether the Commission should conform its definition of affiliation for purposes of dominant/nondominant regulation to one it may ultimately adopt for purposes of determining whether a foreign carrier is entering the U.S. market. *Id.* at ¶66.

Sprint sees no reason to alter the existing dominant/nondominant distinction for international carriers. Because of the additional anticompetitive threat posed by market power and foreign control, dominant carriers should continue to be regulated more carefully than nondominant carriers. Conversely, there is no need to extend dominant carrier regulation to nondominant carriers. Rather, as recommended by Sprint herein, the rules adopted in *BT/MCI* should be sufficient to control possible discrimination and other anticompetitive behavior by facilities-based nondominant U.S. international carriers in which foreign carriers or carriers have an equity interest. Thus, under Sprint's suggested approach, it would not be necessary to modify the present dominant/nondominant classification scheme or, for that matter, the regulations applicable specifically to dominant carriers.

**B. Definition of U.S. Facilities-Based Carriers.**

Sprint agrees with the Commission that it there is no need to change the current definition of a U.S. facilities-based carrier for the reasons set forth in the *Notice*. In addition, Sprint has no objection to codifying such definition in the Rules.

**C. Regulation of International Resale.**

Sprint also agrees that there is no need to closely regulate foreign carrier entry in the U.S. market in the form of resale of switched services or simple private lines; that the Commission should continue its current regulation of private lines interconnected to the public switched network; and that to eliminate confusion, it should codify a "requirement that any carrier that seeks to connect a U.S. half-circuit with a leased, foreign private line half-circuit to provide a switched, basic service must obtain specific Section 214 authority to do so." *Notice* at ¶79. However, once the reseller obtains such authority, it should be able to add any country which the Commission finds affords U.S. carriers equivalent resale opportunities without prior certification.

**D. International Refile.**

The Commission has also asked for comment on AT&T's proposal that the Commission "prohibit a foreign carrier or its U.S. affiliate from refiling U.S. originating or termination traffic without the consent of the originating and terminating carriers." The issue of refile is being considered in ISP 95-004 (Sprint Communications Co. L.P., Reorigination of International Telecommunications Traffic).[30] This issue has generated considerable controversy and Sprint believes that it should be considered, and resolved, as expeditiously as possible in that proceeding. There

[30] Sprint's position on refile traffic is already set forth in its Comments filed March 10, 1995 and Reply Comments filed March 27, 1995 in ISP 95-004.

is no reason to wait until the rest of the issues being considered herein are decided.

## VII. CONCLUSION

For the reasons set forth above, Sprint believes that the Commission's proposed reciprocity test is seriously flawed on both legal and practical grounds. Thus, Sprint recommends that, if a reciprocity test is adopted at all, it should be limited to instances where a foreign carrier is seeking to acquire a license through *de novo* entry or the acquisition of control of a U.S. carrier. Sprint also believes that the Commission can realize its goal of preventing anticompetitive conduct by monopoly or dominant carriers participating in the global telecommunications marketplace in association with U.S. carriers far more effectively by adopting rules of general applicability similar to the conditions imposed in *BT/MCI*.

Respectfully submitted,

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